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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Summary report of the meeting of the Constitutional Affairs Committee (AFCO) of the European Parliament, held in Brussels on 29 September 2016

- A one-day meeting, dominated by two debates, on national Parliaments and the implications of the UK referendum.
- Mr RANGEL (EPP, PT) presented his initial ideas for AFCO's report on the implementation of Treaty provisions concerning national Parliaments, scheduled for vote in Parliament in mid-2017. He suggested to tackle in his report issues related to the delineation of EU and MS' competences, including in the area of trade, as well as the yellow and orange card procedure, the functioning of inter-parliamentary conferences and national Parliaments' procedures for dealing with the European Semester.
- At a dedicated hearing, AFCO met experts (G. MAGANZA, former Director CLS, G. WOLFF, Director/Bruegel think-tank, Y. BERTONCINI, Director/ J. Delors Institute - Notre Europe) to address the EU-UK future constitutional relationship. Bruegel's proposal for a continental partnership for Europe after Brexit – presented by Mr WOLFF – was strongly opposed by Mr MAGANZA on political and institutional grounds. Mr BERTONCINI called for a closer look at the real reasons behind the British vote (sovereignty vs. free movement of people), as well as at the possibility of using safeguard clauses in the area of free movement. MEPs insisted on the four fundamental freedoms and the need to protect European citizens in the UK.

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- **AFCO also came back to the postponement of its vote on the Giegold report on transparency, accountability and integrity in EU institutions, with Mr GIEGOLD (Greens/EFA, DE) urging EPP and ALDE to come back to the negotiating table. The issue would be tackled at a forthcoming AFCO coordinators' meeting.**

2. Chair's announcements

Chair HÜBNER (EPP, PL) made the following announcements:

- The deadline for submitting amendments on Mr VERHOFSTADT's draft report on possible evolutions and adjustments of the current institutional set-up of the European Union has been extended to 20 October at noon.
- Claudia ȚAPARDEL (S&D, RO) has been appointed as AFCO's rapporteur for a possible revision of the 2014 regulation on the statute and funding of European political parties and European political foundations.

3. The implementation of the Treaty provisions concerning national Parliaments

2016/2149(INI)

Rapporteur: Paulo RANGEL (EPP, PT)

- First exchange of views

Ms HÜBNER pointed out that this was an implementation report, a category of reports which saw its scope recently widened to the implementation of the treaties. She suggested that AFCO could draw up more reports of this kind in the future.

Mr RANGEL, the rapporteur, elaborated on the political and constitutional background to his report. The Lisbon treaty had created an expectation that there would be a further and wider legitimisation of the EU, with EP and national Parliaments (NPs), each at their own level, holding the executive and the European Council – the political core of the institutional framework – accountable. Yet in practice NPs were often sceptical and felt in competition with EU institutions and the EP in particular (which he called a "constitutional jealousy"). This was particularly visible at COSAC meetings, where the rhetoric of some NPs was quite strong in this regard.

Mr RANGEL also outlined some of the elements he planned to cover in his report:

- **Fact-finding** (a structural part of an implementation report): work would be undertaken to consult experts and NPs and analyse the statistics, to assess the different mechanisms available under the Lisbon treaty. The proposals in the report would also depend on the results of this exercise;
- **Difficulties in clearly distinguishing between EU and MS' competences:** it was quite clear that some NPs wanted to interfere in matters that should remain at EU level. There was a need for a substantial approach to the notions of subsidiarity and proportionality and for efforts to clarify the line between EU and MS' competences. This could involve e.g. looking at how EU institutions and NPs have interpreted these notions when they have been raised. Naturally, the issue was closely related to the use of the yellow and orange card procedures.
- **Better functioning of the yellow and orange card procedures:** e.g. the eight weeks' timeframe and the need to communicate between NPs seemed to create difficulties. Improvements to these procedures had to be considered, to give NPs the real power they were to get under the Lisbon treaty. This could also be seen as an effort from the EP to acknowledge and stimulate this competence of NPs. The EP could create a mechanism to facilitate inter-parliamentary communication, for which it was in a better position than NPs.
- **Functioning of inter-parliamentary conferences:** COSAC had been transformed into a ring where NPs competed with each other in defending their prerogatives and criticising the EP and EU institutions. This was not constructive. It was important to see how the forms of cooperation and communication between NPs and the EP could be improved.

Some new elements compared to the previous EP reports on the issue could be included as well:

- **European Semester:** this was one of the key fields where there could be very good cooperation between EU institutions and NPs. In their national discourse, MPs said that parliaments had lost their core competence, budgetary powers, yet a number of NPs had not made internal arrangements to adapt to the European Semester, and could have a much wider competence in this context than they currently did. They had to be involved in the process much earlier, so that any documents concerning budgetary issues would be preceded by a debate in NPs.
- **Trade agreements:** against the backdrop of the classification of CETA as a mixed agreement, implying a shared power between NPs and the EP, a closer look at the issue of competences for trade agreements was also needed.

In the debate, MEPs raised the following issues:

- **General context:** several MEPs commented on the issue of “constitutional jealousy” between NPs and the EP. Several possible reasons were mentioned:
 - a general shift of power away from parliaments towards governments, social actors (interest groups) and even the judiciary ((Ms BRESSO (S&D, IT), Mr ANDERSSON (Greens/EFA, SE), Mr SCHÖPFLIN (EPP, HU));
 - the problem of a lack of trust between NPs and the EU institutions, which had also been caused by certain steps taken by the latter, such as insufficient responses to the yellow card procedure (Mr UJAZDOWSKI (ECR, PL)); and
 - the general feeling among some NPs that the EP had been given too much power under the Lisbon treaty (Mr SCHÖPFLIN).

Some suggested, in this context, that the EP could try to help NPs to re-balance the situation, and should take NPs more seriously in general, including by inviting them to a debate on the EP’s report on NPs.

- Functioning of the yellow and orange card procedures:** there was general agreement among the speakers on the need to improve the procedure, and “take it seriously”, otherwise NPs would lack incentives to dedicate resources to proper subsidiarity check. Mr UJAZDOWSKI and Mr SCHÖPFLIN highlighted in this context the particularly harmful effect of the Commission’s insufficient reaction to the NPs' yellow cards, including on posted workers. Mr SCHÖPFLIN felt that this could have the negative side-effect of creating more anger and pressure for a red card, which was not a good dynamics to create. The speakers agreed on the need to address the issue of the eight weeks' timeline and communication. In addition, to incentivise the NPs to engage in the political process, Ms BRESSO suggested allowing for a more flexible use of the existing instruments (e.g. making a strong opposition by a majority of NPs to a specific provision trigger further discussions on a subject). Mr ANDERSSON proposed lowering the thresholds and allowing for green cards. Mr CORBETT (S&D, UK) and Ms KAUFMANN (S&D, DE), on the other hand, remained more cautious as regards the potential of such procedures. Mr CORBETT suggested that the subsidiarity mechanism might be triggered so seldom also because for most legislation subsidiarity was not a problem (there was an in-built political mechanism in the system against over-centralisation via the Council, and an increasing proportion of legislative proposals in the EU was about amending existing legislation). Although it was useful to have a safeguard against breaches of subsidiarity, it was potentially much more important for the NPs – during the eight weeks period foreseen – to shape the position of their minister in the Council. Mr KAUFMANN agreed, and suggested that e.g. the German Bundestag offered a good example for other NPs in this regard.
- Distinguishing between EU and MS' competences:** Ms BERES (S&D, FR) stressed the need for a full clarification regarding the respective responsibilities in the field of economic and financial affairs. This was also evident in the context of the report on the eurozone budget, where there was confusion between the powers of the EP and NPs, and over who should exercise democratic control over the fiscal capacity. Ms KAUFMANN pointed out that NPs’ assessment of whether the principle of subsidiarity had been violated varied, and tended to depend on the different interests at stake. Mr UJAZDOWSKI called upon the EP to pay more attention to subsidiarity in its work.

- **Inter-parliamentary conferences:** Ms BRESSO felt that inter-parliamentary conferences worked better when they discussed concrete, rather than generic issues, on which Ms BERES, Mr RANGEL and Mr CORBETT concurred. She also called for a better organisation of discussions between NPs and EP's committees and floated the idea of a European Senate representing NPs. The latter idea found little support among other MEPs, however, on the grounds that it would lead to a multiplication of structures and frustration, which is why inter-parliamentary cooperation had to remain mainly a networking opportunity for NPs.
- **European Semester:** Ms BRESSO agreed on the need to improve interaction with NPs and suggested coming forward with concrete documents on which they could express themselves on behalf of the whole parliament, in order to have a clearly readable back-and-forth with NPs during the European Semester.
- **Trade agreements:** Mr CORBETT concurred with the rapporteur as regards the risks related to taking the competence on trade away from the EU and re-establishing it at national level, which could theoretically lead to the parliament of the German-speaking minority in Belgium blocking the whole process for Europe. Mr SCHOLZ (GUE/NGL, DE), on the other hand, felt that a stronger legitimacy of such agreements was needed.

Proposed timetable:

- Possible workshop: 30 January 2017
- Exchange of views on working document: 9 February 2017
- Possible meeting with the participation of national parliaments: 20 March 2017
- Exchange of views on draft report: 11 April 2017
- Adoption of draft report: 20 June 2017

7. **The constitutional relationship of the United Kingdom with the European Union: the consequences of the results of the referendum of 23 June 2016**

- Presentation by experts: Guntram Wolff (Director of Bruegel); Giorgio Maganza (former Director for Institutional Affairs at the Council of the EU); Yves Bertoncini (Director of Notre Europe)

Mr WOLFF presented Bruegel's proposal as the outcome of a dialogue among the five authors, who tried to separate the strong emotions and ideological elements of the Brexit debate from reason. Mr WOLFF presented the European Union as the organising-polity of the European continent, but as this polity is now under stress, some thoughts should be given about the possibility of a more than one speed Europe. This rational approach led the authors to propose a new "continental partnership" and the distinction between two "circles": the "inner circle" composed of the 27 remaining Member States, and the "outer circle" composed of States with less political integration but some degree of economic integration, such as Switzerland, Norway, the UK but also Turkey.

Mr WOLFF suggested that two key questions result from this distinction: how should the relations between inner and outer circles be organised and how should the inner circle be organised.

Although Mr WOLFF suggested that a reform of the inner circle, and especially of the Euro-zone was much needed, he focused more on the first question as it is related to the future relationship with the UK. The structure of this relationship will depend on both sides. For Mr WOLFF, the UK is bound by the referendum results to limit freedom of movement in the UK. This already constitutes a loss for Britain and hence an adequate "price to pay" to leave the inner circle.

Accordingly, the EU should consider a relationship in which freedom of movement applies within the inner circle but not in the outer circle. In addition, a set of rules, applied homogenously in both circles should be designed to sustain a significant degree of economic integration. Although the UK could have its say on those rules, it will not have a right to vote or veto. This is of importance for the EU in order to prevent the UK from performing "regulatory dumping".

Whether the "price" is enough is a political issue. The alternative is some form of FTA, however this type of agreement does not protect the EU from dumping policies and/or trade barriers.

Presentation by Giorgio Maganza (former Director for Institutional Affairs at the Council of the EU)

Mr MAGANZA gave an "answer of concern" to the previous speaker. He considered the continental partnership (CP) proposal a "dangerous concession to the UK" as it could potentially result in a "Single Market" government. He warned that the UK, if given a voice at a CP Council, will not be satisfied with a purely consultative position. He also recalled the importance of the four fundamental freedoms. Indeed, Mr MAGANZA feared a "domino effect" on other Member States. The UK should not be treated differently because of its economic and political importance: there were other models available, like the Norwegian or Swiss options.

From a more technical point of view, he considered the "CP" proposal unrealistic because of the significant number of legal and political concerns it raises. The proposal suggests the additional creation of a CP Council where CP countries would meet to discuss and negotiate EU legislation. This seems hardly practicable when confronted to the EU legislative process and unacceptable to the UK. In particular, how would this CP Council fit into the co-legislative process? Moreover, regarding law enforcement, the European Commission would remain the legitimate actor. However, this would not be accepted easily by the UK government. The same applies for the European Court of Justice. Finally, the CP proposal would require consequent constitutional and treaty changes. It should be recalled that the European Court of Justice is not keen to jeopardize the four fundamental freedoms on which the EU is founded and Mr MAGANZA doubted that it would allow it.

Mr MAGANZA concluded by arguing that Brexit negotiations have to make sure that the constitutive boundaries of the EU are preserved, rather than altered, and that there was no good reason for the EU to offer more to the exiting UK than what it was ready to offer to the UK as a member with the February 2016 deal.

In the subsequent round of questions, Mr MAGANZA answered to Ms HÜBNER (EPP, PL) and clarified the procedure for the up-coming negotiations on the UK exiting the Union and on the UK's new relationship with the Union. Those two points must be separated and will follow two distinct procedures. Only negotiations on the exit terms will be settled under Article 50. The second step will be further negotiations, governed by other rules and procedures to define the new relationship. It is likely that the latter would require Member States' approval by unanimity and ratification. He confirmed Mr SARYUSZ-WOLSKI's (EPP, PL) affirmation that the negotiations on this new relationship would fall under the mandate of the AFET Committee. Thought could be given to a smooth bridge, or interim measures, but the real negotiations will be separate and come after.

Mr MAGANZA also added that models of relationships already exist and that there was no imperative need to invent new ones. Moreover, he heard calls to reform the EU, and considered them relevant, however, the reform of the EU should be kept separate from the Brexit debate.

Presentation by Yves Bertoncini, Director of Notre Europe, Delors Institute

After a point on contextualisation, Mr BERTONCINI insisted on the need to clarify the reasons that led the British people to vote to leave the Union. He disagreed with Mr WOLFF on the CP proposal but also on his diagnosis: according to him, the British people expressed a wish to "take back control" of the country's political sovereignty, rather than to stop freedom of movement. If immigration played a significant role during the referendum campaign, it is unclear whether this refers to the refugee crisis or free movement of people within the EU. Furthermore, more and more studies are being published and indicate that British voters voted to bring back political powers to Westminster.

If the choice to leave was a political choice and not an economic one, then the ideal deal for the UK would not be a continental partnership but a free trade agreement, like the one the European Union is about to conclude with Canada.

Mr BERTONCINI invited MEPs to prepare to make a conceptual effort to think of the UK outside the EU: it is common for non-members to have safeguard clauses, especially on freedom of movement (case of Norway).

Moreover, he suggested to take inspiration from the accession procedure and to think about the UK exiting the Union as a reverse accession procedure. It usually takes longer than two years, with safeguard clauses, sunset clauses and phasing-in and out. This could be of particular relevance regarding citizens' rights.

Concluding on a more political note, Mr BERTONCINI reaffirmed the importance of the four freedoms as founding principles of the European Union. It is up to the UK to trigger Article 50 but it is the responsibility of the EU to defend its interests and to stand together.

Exchange of views

In the debate, Mr SARYUSZ-WOLSKI (EPP, PL) strongly opposed the CP proposal and warned that any similar proposal will face blocking from Central and Eastern European Member States. He expressed his serious concerns about the fate of the EU citizens held "prisoners" in the UK and the defending of their interests. The negotiations over the UK's new relationship with the EU could lead to serious institutional damage and to long term effects on the freedom of movement of workers within the remaining 27 Member States. The price of curbing freedom of movement would go to Eastern Europe and this would change the balance between Central and Eastern European states and other members. Mr SARYUSZ-WOLSKI regretted that so far, the focus seems to be on the UK interests rather than on the EU interest, which is to remain together in a balanced way. Furthermore, he regretted that the negotiators chosen by European institutions, one Frenchman and two Belgians, do not represent the two biggest European communities living in the UK (the Polish and the Irish).

Mr CORBETT (S&D, UK) shared his colleague's concerns regarding the situation of Europeans living in the UK and of Poles in particular. He stated that the uncertainty around the intention of the British government to go for "hard" or "soft" Brexit makes it very difficult to prepare for future negotiations. In addition to the question of the accession to the Single Market, there is also the issue of European agencies in which the UK is involved, as well as research programmes and even the Euratom treaty. Mr CORBETT insisted on the silence of Article 50 on whether the UK could withdraw its notification to leave before the end of the two-year period. The prevailing view seems to be that this is possible, as long as it is done in good faith. Mr CORBETT concluded by stating that he does not believe the CP to be legally and politically workable. He also added that there are not two neat circles in the EU but a plurality of permutations.

Ms BRESSO (S&D, IT) said that it was urgent to limit the excessive tendency towards a la carte Europe. To redefine and reform Europe is a work that the EP will have to carry out, and treaties will have to be changed if needed. In this regard, one should clarify what Mr VERHOFSTADT called "associate status" in his report to avoid additional different relations: does it refer to something closer to a "soft" Brexit or a "hard" one? However, the rights of Europeans living in the UK and the basic principles should be secured in both scenarios. Ms BRESSO suggested to offer a free trade agreement to the UK.

Ms ANDERSSON (GUE/NGL, UK) called upon AFCO members to take into serious consideration the case of Northern Ireland. She feared that Brexit and limits to free movement is going to challenge the peace status-quo. She recalled that Northern Ireland has no legal or geographical attachment to Britain. She hoped for separate discussions with the authorities of Northern Ireland before and after notification from Britain to leave.

Chair HÜBNER closed the exchange of views by sharing some of her memories from the discussions on the introduction of Article 50 at the European Convention. Some concerns were raised at the time about the possibility that it might inspire someone. However, nobody thought of the UK. She raised the issue of the sequencing of all the agreements and whether the withdrawal agreement will have to take into account the future relationship.

9. Transparency, accountability and integrity in the EU institutions

2015/2041(INI)

- Consideration of compromise amendments

Mr GIEGOLD called for a vote on his report as soon as possible in AFCO, given that a potential majority had been reached on his proposals. He criticised what he described as a decision from "the top of the house" to simply shelve it and stressed that he was open to discuss any precise proposals for changes.

The Chair (Ms BRESSO) indicated that the next coordinators' meeting would have to discuss the wider issue of the coordination between the Corbett report and Giegold report, and how to take into account the developments regarding the Commission's proposal for an IIA on a mandatory Transparency Register. She agreed with Mr GIEGOLD on the need to set a date for the vote on his report.

Mr SCHOLZ and Mr CASTALDO (EFDD, IT) supported a quick vote on the report. Mr CORBETT also expressed his disappointment at the postponement of the vote, as he would have preferred the issues related to transparency to be settled in the Giegold report, rather than in his report on the EP's rules of procedure.

Mr GIEGOLD welcomed the opening from Ms BRESSO on the possibility of having a vote and stressed that – until recently – a majority in the committee had supported it. He urged EPP and ALDE to come back to the negotiating table and then accept that the majority would decide on his proposals.
